

## Section 13

### ***Job Creation and Worker Assistance Act of 2002***

The Job Creation and Worker Assistance Act of 2002 passed a number of tax benefits specifically meant to stimulate the economy and to encourage investment and rebuild the area of Manhattan ("New York Liberty Zone") destroyed by the events of September 11, 2001. These tax breaks are in addition to the business provisions concerning the 30 percent first-year depreciation and the five-year carryback of net operating losses (NOL) available to all taxpayers nationwide.

#### **Highlights of the tax benefits for New York City include:**

- **Expansion of Work Opportunity Tax Credit (WOTC)** to include certain New York City Employment allows a **new-targeted group** of employees to qualify for the credit. Employees who are hired and work in the Liberty Zone will qualify. No certifications for members of this targeted group are required to qualify for the credit. The maximum credit per employee is \$2,400.
- **Special Depreciation Allowances** for certain New York City Property allows a special first-year depreciation deduction equal to 30 percent of the depreciable basis of the qualified Liberty Zone Property. In addition to being a qualified type of property: (1) substantially all of the use of such property must be in the Liberty Zone; (2) the original use of the property must commence on or after September 11, 2001; and (3) the property must be acquired by purchase after September 10, 2001 and placed in service on or before December 31, 2006 (January 1, 2010, in the case of qualifying nonresidential real property and residential rental property).
- **Authorization of Tax Exempt Private Activity Bonds** for Rebuilding New York City property damaged in September 11 Terrorist Attack. Authorizes \$8 billion of **tax-exempt private activity bonds** to finance the construction and rehabilitation of nonresidential real property, or residential rental real property in the Liberty Zone. The bonds can be issued in calendar years 2002, 2003, and 2004.
- **Increased Expensing for Liberty Zone Property** allows up to a maximum of an additional \$35,000 in expensing for qualifying property under Election to Expense Certain Depreciable Business Assets (Section 179). This amount is in addition to the otherwise deductible amount under Section 179 (\$24,000 in 2001 and 2002).

- **Extended Replacement Period for Liberty Zone Property** extends the Section 1033 two-year period for a tax-free replacement of involuntarily, converted property to five years as a result of the September 11 terrorist attack.
- **Qualified Leasehold Improvement Property** - allows New York leasehold property to qualify for a five-year life for Section 168 depreciation rules.

## **New York Liberty Zone (NYLZ)**

This notice provides guidance concerning the NYLZ business employee credit, Qualified New York Liberty Bonds, and Liberty Advance Refunding Bonds.

### **BACKGROUND**

Section 301 of the Job Creation and Worker Assistance Act of 2002, Pub.L. No.107-147, provides various tax benefits for the area of New York City damaged or affected by the terrorist attack on September 11, 2001. This notice provides guidance with respect to three of these provisions: (1) Section 1400L(a) of the Internal Revenue Code (IRC), which provides a new targeted group for the Work Opportunity Tax Credit (WOTC); (2) Section 1400L(d), which authorizes issuance of an aggregate of \$8 billion of tax-exempt private activity bonds to finance the acquisition, construction, reconstruction, and renovation of certain nonresidential real property, residential rental property, and public utility property; and (3) Section 1400L(e), which authorizes the issuance of an aggregate of \$9 billion of certain tax-exempt, advance refunding bonds.

### **OVERVIEW OF THE PROVISIONS**

#### **NYLZ Business Employee Credit**

Under Section 51 of the IRC, the WOTC is available on an elective basis to an employer who hires individuals from one or more of eight targeted groups. To qualify as a member of a targeted group, the employee must be certified by a state employment security agency. The credit equals 40 percent of the qualified first-year wages of an employee who is employed 400 or more hours (25 percent for those employed fewer than 400 hours but at least 120 hours). Generally, qualified first-year wages are wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer. The maximum credit per employee is \$2,400 (40 percent of the first \$6,000 of qualified first-year wages).

Section 1400L(a) provides for a new targeted group for the WOTC: NYLZ business employees. The new targeted group includes individuals who perform substantially all of their services in the NYLZ, and may include individuals who

perform substantially all of their services elsewhere in New York City for a business that relocated from the NYLZ due to the physical destruction or damage of its workplace within the NYLZ by the September 11, 2001 terrorist attack. Instead of being based on "qualified first-year wages," the new credit is based on "qualified wages," which are wages paid or incurred to a NYLZ business employee for work performed during 2002 and 2003. With the exception of the certification requirement, the other Section 51 rules regarding the WOTC apply.

### **Qualified New York Liberty Bonds and Liberty Advance Refunding Bonds**

Section 1400L(d) of the IRC creates a new type of tax-exempt bond known as Qualified New York Liberty bonds (Liberty Bonds). IRC Section 1400L(e) provides for additional advance refunding of certain tax-exempt bonds (Liberty Advance Refunding Bonds). In general, Liberty Bonds and Liberty Advance Refunding Bonds may be issued by certain eligible issuers in the State of New York if, among other things, they are designated as Liberty Bonds or Liberty Advance Refunding Bonds by the Governor of New York or the Mayor of New York City. These Bonds must be issued after March 9, 2002, and before January 1, 2005. Liberty Bonds and Liberty Advance Refunding Bonds are subject to certain of the provisions of Sections 103 and 141-150 of the IRC.

IRC Section 149(e) and the regulations thereunder require issuers of tax-exempt bonds to report certain bond-related information to the IRS. That information is reported on [Form 8038](#) series information returns. The information is generally required to be submitted by the 15<sup>th</sup> day of the second calendar month after the close of the calendar quarter in which the bonds were issued. These provisions apply to the issuance of Liberty Bonds and Liberty Advance Refunding Bonds.

### **New York Liberty Zone (NYLZ) – Frequently Asked Questions and Answers**

#### **Q.) What is a NYLZ business?**

**A.)** A NYLZ business is any business that is either (1) located in the NYLZ, or (2) located in New York City, outside the NYLZ, as a result of physical destruction or damage of the place of business by the September 11, 2001 terrorist attack. A NYLZ business does not include, however, any business that employed an average of more than 200 employees on business days during the taxable year.

#### **Q.) What is the NYLZ?**

**A.)** The NYLZ is that portion of Manhattan in New York, New York, located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway).

**Q.) Who is a NYLZ business employee?**

**A.)** For any period, a NYLZ business employee is any employee of a NYLZ business who performs substantially all of his or her services during the period for the business in the NYLZ. The term can also include an employee of a NYLZ business located outside of the NYLZ if substantially all of the employee's services are performed during the period in New York City.

**Q.) What does "substantially all" of the services performed by the employee mean?**

**A.)** For this purpose, "substantially all" means 80 percent or more.

**Q.) Must the employee be a new hire for the employer to claim a credit under this provision?**

**A.)** No. The employee may be an existing employee, a new employee, or a rehire.

**Q.) Are independent contractors, partners, and self-employed persons considered "employees" for purposes of the NYLZ business employee credit?**

**A.)** No.

**Q.) What are "qualified wages"?**

**A.)** "Qualified wages" are wages paid or incurred by the employer during the tax year to a NYLZ business employee of the employer for work performed during 2002 or 2003.

**Q.) Is there a limit to the amount of wages that an employer can take into account for any employee?**

**A.)** Yes. The qualified wages that may be taken into account for any employee are limited to the first \$6,000 of qualified wages per calendar year.

**Q.) How does an employer determine whether it has met the average 200 employee limit for the purpose of claiming the NYLZ business credit?**

**A.)** An employer can use any reasonable method of calculating the average number of employees on business days during the taxable year. For example, an employer may count employees on each business day and average the numbers, or count employees on the last day of each pay period and average those numbers. If an employer uses different pay periods for different groups of

employees, it may calculate the average number of employees in the groups separately, and then add the averages.

**Q.) What is a business day for this purpose?**

**A.)** A business day is any day on which the business is open to the public or business is regularly conducted.

**Q.) How does an employer count employees if it is part of a controlled group of corporations or a member of partnerships, proprietorships, etc., that are under common control?**

**A.)** The rules of IRC Section 52, which provides special rules for the WOTC for employers that are members of controlled groups or under common control, apply for purposes of determining the average number of employees.

**Q.) When calculating the average number of employees, how does the employer count part-time employees?**

**A.)** The employer may count each part-time employee as one employee. In the alternative, the employer may count each part-time employee as a fraction of an employee, using any reasonable method of determining full-time equivalents. Section 54.4980B-2 of the Qualified Pension, Etc. Plans Regulations provides examples of reasonable methods.

**Q.) Is a franchisee eligible to claim this credit?**

**A.)** Yes.

**Q.) Will the IRS require an employer to have the New York State Department of Labor determine the number of its employees on September 11, 2001?**

**A.)** No.

**Q.) Can a tax-exempt organization claim the NYLZ business employee credit?**

**A.)** No.

**Q.) How do the rules differ for a NYLZ business with employees inside the NYLZ and one that includes employees outside the NYLZ?**

**A.)** A NYLZ business located inside the NYLZ may claim the credit on the basis of qualified wages it pays to all of its NYLZ business employees. In the case of a NYLZ business located outside the NYLZ, the number of employees that it can take into account on a given day is limited to the excess of the number of employees of the employer in the NYLZ on September 11, 2001, over the number of NYLZ business employees located within the NYLZ on that day. The examples below illustrate these rules, including the situation in which a NYLZ business is located both within and outside the NYLZ.

**Example 1:** A is a NYLZ business that remained in the NYLZ. Throughout 2002, A had 40 NYLZ business employees. A did not exceed the 200-employee limit for 2002. A can claim the credit on the basis of the qualified wages it paid to each of its employees without regard to the number of employees it had on September 11.

**Example 2:** B is a NYLZ business that relocated to a location outside the NYLZ but within New York City. On September 11, 2001, B had 130 employees in the NYLZ. On each business day in 2002, B had 150 employees within New York City but outside the NYLZ. B did not exceed the 200-employee limit for 2002. B can claim the credit on the basis of the qualified wages it paid to no more than 130 of its employees.

**Example 3:** C is a NYLZ business that had two places of business in the NYLZ on September 11, 2001. One place of business remained in the NYLZ. C relocated the other place of business to a location outside the NYLZ but within New York City. On September 11, 2001, C had 60 employees in the NYLZ. Throughout 2002, 40 employees performed services at the place of business inside the NYLZ, and 30 employees performed services at the place of business outside the NYLZ. C did not exceed the 200-employee limit for 2002. C can claim the credit on the basis of the qualified wages it paid to no more than 60 employees (the 40 employees inside the NYLZ and 20 of the employees outside the NYLZ).

**Example 4:** The facts are the same as in Example 3, except that, throughout 2002, 70 employees performed services at the place of business inside the NYLZ, and 20 employees performed services at the place of business outside the NYLZ. C can claim the credit on the basis of the qualified wages it paid to all 70 employees inside the NYLZ. C cannot claim the credit on the basis of the qualified wages it paid to any of the employees outside the NYLZ.

**Q.) Can a NYLZ business use wages paid to an employee to claim both the new credit and the existing WOTC or Welfare-to-Work credit?**

**A.)** No. However, the business can use the employee's wages to claim the other credit, if the employee's wages are not used to claim the NYLZ credit and the employee is either a member of a targeted group for purposes of the WOTC (IRC Section 51) or a long-term family assistance recipient for purposes of the Welfare-to-Work credit (IRC Section 51A). In addition, wages paid to the same employee in different tax years might be used to obtain two different tax credits.

**Example 5:** The facts are the same as in Example 4 above. C cannot claim the WOTC or the Welfare-to-Work credit on the basis of wages paid to any of the NYLZ employees. C can claim the WOTC or the Welfare-to-Work credit on the basis of wages paid to the employees outside the NYLZ, provided all the requirements for the credit are met.

**Q.) When claiming the credit, must a NYLZ business outside of the NYLZ provide substantiation that it relocated as a result of the physical destruction or damage of its place of business by the September 11, 2001, terrorist attack?**

**A.)** No. The Service could, of course, request this substantiation on examination.

**Q.) How does an employer claim the credit?**

**A.)** An employer must attach [Form 8884](#), NYLZ Business Employee Credit, to its income tax return. An employer who claims the WOTC for any other targeted group will also have to attach [Form 5884](#), Work Opportunity Credit.

**Q.) How are the limitation amounts in Section 1400L(d)(3)(B) allocated?**

**A.)** One-half of each limitation amount is allocated to bonds designated by the Governor, and the other half is allocated to bonds designated by the Mayor. The Governor and the Mayor are not required to utilize these limitation amounts at the same time. In addition, the Governor and the Mayor may utilize the limitation amounts in any order relative to their designation of bonds for other qualified project costs.

**Q.) Is the New York City Municipal Water Finance Authority eligible for the advance refunding provisions of Section 1400L(e)(1)?**

**A.)** Yes. The reference in Section 1400L(e)(2)(B) to the "New York Municipal Water Finance Authority" is deemed to refer to the New York City Municipal Water Finance Authority.

**Q.) Are bonds issued by the New York City Transit Authority (NYCTA) or the Triborough Bridge and Tunnel Authority (TBTA) eligible for the advance refunding provisions of Section 1400L(e)(1) if they otherwise satisfy the requirements of that provision?**

**A.)** Yes. Bonds issued by NYCTA and TBTA that otherwise satisfy the provisions of Section 1400L(e)(1) are treated as issued by the Metropolitan Transportation Authority of the State of New York.

**Q.) Are bonds issued by the Municipal Assistance Corporation for The City of New York (MAC) eligible for the advance refunding provisions in Section 1400L(e)(1) if they otherwise satisfy the requirements of that section?**

**A.)** Yes. The Chairmen and Ranking Members of both the House Ways and Means Committee and the Senate Finance Committee have advised the Treasury Department that they believe bonds issued by the MAC should be included in these provisions, and that they plan to introduce and enact legislation to clarify this treatment, effective as if originally included in the Job Creation and Worker Assistance Act of 2002, at the earliest opportunity.

**Q.) What information must an issuer of Liberty Bonds provide to the Service in order to comply with Section 149(e)?**

**A.)** An issuer of Liberty Bonds must complete [Form 8038](#), Information Return for Tax-Exempt Private Activity Bond Issues, in accordance with the instructions and complete Part II by checking the box on Line 11m (Other), write in "Liberty Bonds" for the description, and enter the amount of the bonds in the Issue Price Column. In addition, the Issuer must attach a copy of the document used by the Governor or Mayor to designate the bonds as Liberty Bonds.

**Q.) What information must an issuer of Liberty Advance Refunding Bonds provide to the Service in order to comply with Section 149(e)?**

**A.)** An issuer of Liberty Advance Refunding Bonds must complete the appropriate Form 8038-series return (Form 8038, 8038-G, or 8038-GC) in accordance with the instructions for a refunding bond and attach a copy of the document used by the Governor or Mayor to designate the bonds as Liberty Advance Refunding Bonds.



## **QUALIFIED NEW YORK LIBERTY ZONE PROPERTY UNDER THE ACT**

For guidance regarding qualified property or qualified New York Liberty Zone property provided by Sections 168(k) and 1400L(b), see Rev. Proc. 2002-33, 2002-20 I.R.B. 963 (May 20, 2002).

### **Job Creation and Worker Assistance Act – Business Provisions**

#### **A. Special Depreciation Allowance for Certain Property**

- **Explanation of Provision**

The provision allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified property. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service.

**Example 1** – Assume that on March 1, 2002, a calendar year taxpayer acquires and places in service qualified property that costs \$1 million. Under the provision, the taxpayer is allowed an additional first-year depreciation deduction of \$300,000. The remaining \$700,000 of adjusted basis is recovered in 2002 and subsequent years pursuant to the depreciation rules of present law.

**Example 2** – Assume that on March 1, 2002, a calendar year taxpayer acquires and places in service qualified property that cost \$50,000. In addition, assume that the property qualifies for the expensing election under Section 179. Under the provision, the taxpayer is first allowed a \$24,000 deduction under Section 179. The taxpayer then is allowed an additional first year depreciation deduction of \$7,800 based on \$26,000 (\$50,000 original cost less the Section 179 deduction of \$24,000) of adjusted basis. Finally, the remaining adjusted basis of \$18,200 (\$26,000 adjusted basis less \$7,800 additional first-year depreciation) is to be recovered in 2002 and subsequent years pursuant to the depreciation rules of present law.

#### **Effective Date**

The provision applies to property placed in service after September 10, 2001.

## **B. Five-Year Carryback of Net Operating Losses (NOL)**

- **Explanation of Provision**

The provision temporarily extends the general NOL carryback period to five years (from two years) for NOLs arising in taxable years ending in 2001 and 2002.

The provision also allows an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2001 and 2002, as well as NOL carryforwards to these taxable years, to offset 100 percent of a taxpayer's AMTI.

### **Effective Date**

The 5-year carryback provision is effective for NOLs generated in taxable years ending after December 31, 2000.

The provision allowing the use of NOL carrybacks and carryforwards to offset 100 percent of AMTI is effective for taxable years ending before January 1, 2003.

## **C. Unemployment Benefits**

- **Explanation of Provision**

The act provides for up to 13 weeks of temporary extended unemployment benefits for eligible displaced workers. These benefits would be available following enactment in any state entering into an agreement with the Secretary of Labor to provide such extended benefits. Benefits would be available to workers who filed an initial claim for unemployment benefits on or after March 15, 2001 (approximately when the recent recession began and who remain unable to find work). States who are continuing to experience a high rate of unemployment (those with an insured unemployment rate of at least 4%) are eligible. Displaced workers who exhaust their up to 13 weeks of temporary extended unemployment benefits provided nationwide, as described above, would be eligible for up to an additional 13 weeks of temporary extended unemployment benefits.

The benefits would be 100 percent federally funded and would be available through December 31, 2002, or until a state terminates its agreement, if sooner.

### **Effective Date**

The temporary extended unemployment provision would be effective upon enactment.

## **Job Creation Act and Worker Assistance Act – Miscellaneous and Technical Provisions**

### **D. Allowance of Electronic Forms 1099**

- **Explanation of Provision**

The provision removes the statutory impediment to providing copies of specified information returns to taxpayers electronically. Accordingly, these copies may be furnished electronically to a recipient who has consented to this; the copies may be furnished in a manner similar to the one permitted with respect to Form W-2 or in another manner provided by the Secretary.

#### **Effective Date**

The provision is effective on date of enactment.

### **E. Deduction for Classroom Materials**

- **Explanation of Provision**

The act provides an above-the-line deduction for up to \$250 annually of expenses paid or incurred by an eligible educator for books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom. To be eligible for this deduction, the expenses must be otherwise deductible under IRC Section 162 as a trade or business expense.

An eligible educator is a kindergarten through Grade 12 teacher, instructor, counselor, or principal in a school for at least 900 hours during a school year. A school means any school, which provides elementary education or secondary education, as determined under State law.

#### **Effective Date**

The provision is effective for taxable years beginning after December 31, 2001, and before January 1, 2004.

## **F. Extend the Work Opportunity Tax Credit (WOTC)**

### **Present Law**

The WOTC is available on an elective basis for employers hiring individuals from one or more of eight targeted groups. The credit equals 40 percent (25 percent for employment of less than 400 hours) of qualified wages. Generally, qualified wages are wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer.

The maximum credit per employee is \$2,400 (40 percent of the first \$6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is \$1,200 (940 percent of the first \$3,000 of qualified first-year wages). For purposes of the credit, wages are generally defined as under the Federal Unemployment Tax Act (FUTA), without regard to the dollar cap.

### **Targeted groups eligible for the credit**

The eight targeted groups are: (1) families eligible to receive benefits under the Temporary Assistance for Needy Families (TANF) Program; (2) high-risk youth; (3) qualified ex-felons; (4) vocational rehabilitation referrals; (5) qualified summer youth employees; (6) qualified veterans; (7) families receiving food stamps; and (8) persons receiving certain Supplemental Security Income (SSI) benefits.

The employer's deduction for wages is reduced by the amount of the credit.

### **Expiration Date**

The credit is effective for wages paid or incurred to a qualified individual who began work for an employer before January 1, 2002.

### **Explanation of Provision**

The act extends the Work Opportunity Tax Credit for two years (through December 31, 2003).

### **Effective Date**

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 2002, and before January 1, 2004.

## **Extend the Welfare-to-Work Tax Credit**

### **In General**

The Welfare-to-Work tax credit is available on an elective basis for employers for the first \$20,000 of eligible wages paid to qualified long-term family assistance recipients during the first two years of employment. The credit is 35 percent of the first \$10,000 of eligible wages in the first year of employment and 50 percent of the first \$10,000 of eligible wages in the second year of employment. The maximum credit is \$8,500 per qualified employee.

Qualified long-term family assistance recipients are: (1) members of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received family assistance for a total of at least 18 months (whether or not consecutive) after the date of enactment of this credit if they are hired within 2 years after the date that the 18-month total is reached; and (3) members of a family that is no longer eligible for family assistance because of either Federal or State time limits, if they are hired within two years after the Federal or State time limits made the family ineligible for family assistance. Family assistance means benefits under the TANF program.

The employer's deduction for wages is reduced by the amount of the credit.

### **Expiration Date**

The Welfare-to-Work credit is effective for wages paid or incurred to a qualified individual who began work for an employer before January 1, 2002.

### **Explanation of Provision**

The bill extends the Welfare-to-Work credit for two years (through December 31, 2003).

### **Effective Date**

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 2002, and before January 1, 2004.

### **IRS WEB SITE**

This notice is also available on the IRS Web site at <http://www.irs.gov>. Any additional questions and answers the IRS develops will be released in further guidance and placed on the Web site.